IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1897 OF 2005

Mahadev Sharnappa Bhimnali ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr.S.V. Marwadi, for the Applicant.

Mr.A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

29th March 2005

P.C.:

. Pursuant to the order passed yesterday, 28th March 2005, the Commissioner of Police was personally present in Court today. He has assured that appropriate instructions will be issued to all concerned, so as to ensure that such lapses will not occur in future. He has assured to issue instructions within one week from today and to place the same on the record of

this Court. That assurance is accepted.

. Matter be placed under the caption "For Directions" after one week for considering the nature of instructions issued by the Commissioner of Police, as assured.

(A.M.KHANWILKAR,J.)

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29th March 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant has been named as accused in connection with CR.No.470/2003 registered with Malad Police Station. The prosecution case is that the Applicant has committed murder of his brother on the fateful night of 2nd December 2003.

. Three circumstances are pressed agaisnt

the Applicant to indicate his complicity in the commission of the alleged offence. The first circumstance is that of last seen together. The second circumstance is that the Applicant had disclosed in the presence of police about his involvement in the alleged offence. And the third circumstance is that of recovery of nylon rope at the instance of the Applicant.

. I find substance in the argument of the Counsel for the Applicant that the alleged disclosure made by the Applicant in the presence of the police will be of no avail, as that is inadmissible in evidence. Similarly, the recovery of nylon rope has been criticised by the Applicant on the argument that the panchnama for the recovery commenced on 12th December 2003 whereas the recovery is effected on 15th December 2003. Learned A.P.P., on the other hand, contends that the above argument is complete misreading of the panchnama. In fact, according to the learned A.P.P., the disclosure about the concealment of the nylon rope was made by the Applicant on 15th December 2003 and on the same day, recovery of the said nylon rope from the

place identified by the Applicant was made, which was concealed underground near Silver Coin Building. Even so, the recovery of nylon rope, as per the disclosure of the Applicant, by itself, cannot be the basis to complete the chain. In any case, the only other circumstance is that the Applicant was last seen together. It is seen that the prosecution is not in a position to explain the blood marks found near the dead body of the deceased, as well as broken bangles. The argument that it is a construction site and possibility of broken bangles lying near the spot of some worker cannot be ruled out is of no avail. Because the prosecution case hinges on circumstantial evidence, as some doubt arises about the evidence already collected and, in particular, that the Applicant has been suspected as accused and has been implicated on account of the disclosure made before the Police, which is inadmissible evidence, also persuades me to accept the argument that the Applicant has been framed in the alleged offence. Besides, investigation is completed and charge sheet is filed. Accordingly, the Applicant deserves to be enlarged on bail on the following conditions.

(A) The Applicant is directed to be released on bail in connection with CR.No.470/1963 registered with Malad Police Station on executing personal bond in the sum of Rs.10,000/- (Rupees Ten thousand only) with two local sureties in the like amount. The condition of furnishing local sureties cannot be dispensed with in the present case, as the prosecution apprehends that the Applicant will not be available for trial, if released, as he has no permanent place of residence in Mumbai.

(B) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(C) The Applicant shall co-operate for the purpose of early disposal of the trial. If the trial Court is of the opinion that the Applicant is responsible in any manner for the delay in disposal

of the trial, that opinion be recorded in the roznama, which can be a ground for cancellation of bail.

(D) The Applicant shall report to the investigating officer once a month on First Saturday of every English calendar month between 10 a.m. to 2 p.m.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)